

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: : Chapter 11
:
NORTHWESTERN CORPORATION, : Case No. 03-12872 CGC
:
Debtor. :

ESTATE OF ORVAL MEYER, :
:
Plaintiff, :
:
v. : Civil Action No. 04-167 JJF
:
NORTHWESTERN CORPORATION, aka :
NORTHWESTERN PUBLIC SERVICE :
COMPANY, aka MONTANA POWER :
LLC, aka NORTHWESTERN ENERGY, :
aka NORTHWESTERN ENERGY- :
MONTANA, :
:
Defendant. :

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MEMORANDUM OPINION

April 29, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion For Withdrawal Of Reference And Transfer To United States District Court In Judicial District Of Montana, Butte Division filed by the Estate of Orval Meyer ("Plaintiff"). (D.I. 1.) For the reasons discussed, the Court will grant the Motion.

BACKGROUND

On July 13, 1999, a City of Helena bus struck an overhead gas heater when entering its bus barn, separating the gas line and causing the bus barn to fill with gas. The following morning, Orval Meyer opened the bus barn garage door and the gas exploded. Mr. Meyer passed away a few days later from his injuries. Mr. Meyer's Estate ("Plaintiff") brought a personal injury and wrongful death lawsuit against the City of Helena, the Montana Power Company, and its successor, Northwestern Energy, L.L.C. ("Northwestern"), on July 22, 2002, in Montana state court.

Northwestern is a wholly owned subsidiary of Northwestern Corporation, a Delaware corporation currently in Chapter 11 bankruptcy in the United States Bankruptcy Court in the District of Delaware (the "Delaware Bankruptcy"). Northwestern is not a named party in the Delaware Bankruptcy. By its Motion, Plaintiff moves the Court to withdraw the reference and transfer this action to the United States District Court in the Judicial

District of Montana, Butte Division ("Montana District Court").¹

DISCUSSION

I. Permissive Withdrawal²

The Court is persuaded that Plaintiff has shown sufficient "cause" to justify permissive withdrawal. The first sentence of Section 157(d) provides that a district court may withdraw the reference of any case under this section "for cause." Courts in the Third Circuit have enumerated a number of factors that may constitute "cause," including: the goal of promoting uniformity in bankruptcy administration, whether the action is core or non-core, judicial efficiency, and discouraging forum shopping. In re Pruitt, 910 F.2d 1160, 1168 (3d Cir. 1990) (citing Holland Am. Ins. Co. v. Succession of Roy, 777 F.2d 992, 999 (5th Cir. 1985)); In re G-I Holdings, Inc., 295 B.R. 211, 216 (D. N.J. 2003).

The Court concludes that permissive withdrawal is proper because, pursuant to 28 U.S.C. § 157(b)(5), the Bankruptcy Court is without subject matter jurisdiction over Plaintiff's claims. Section 157(b)(5) provides:

¹ Respondents did not file an opposition brief to Plaintiff's Motion, and therefore, the Court will dispose of the instant matter on the limited record before it.

² Because Northwestern is not a named party in the Delaware Bankruptcy and only a subsidiary of the Debtor, the automatic stay does not prohibit the Court from addressing the merits of the instant motion. See Maritime Elec. Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1205 (3d Cir. 1992).

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 157(b)(5). The mandate from Section 157(b)(5), that personal injury tort and wrongful death claims be tried by the district court, effectively deprives the Bankruptcy Court of jurisdiction to entertain the instant action. See Hansen v. Borough of Seaside Park, 164 B.R. 482, 485-86 (D. N.J. 1994) (citing Vinci v. Town of Carmel, 108 B.R. 439, 441-42 (Bankr. S.D.N.Y. 1989)); In re Manidis, Bankr. Adv. No. 93-0181, 1994 WL 250072, *6-7 (Bankr. E.D. Pa. May 27, 1994) (citations omitted). Accordingly, the Court concludes that permissive withdrawal is appropriate. See In re Patterson, 150 B.R. 367, 368 (E.D. Va. 1993).

II. Transfer Pursuant To 28 U.S.C. § 157(b)(5)

The Court also concludes that a transfer to the Montana District Court is appropriate in this case. As cited above, Section 157(b)(5) permits a district court to order personal injury and wrongful death claims to be tried in the district where the bankruptcy action is proceeding or in the district where the claim arose. In the Court's view, the circumstances in this case require the Court to exercise its discretion and order a transfer to Montana.

The events at the heart of this action all occurred in

Montana. Also, Plaintiff has indicated its intention to consolidate the instant action with the pending Montana state court action if the instant action is transferred to the Montana District Court. (D.I. 2 at 3.) Further, the claims in the instant action involve Montana tort principles and all of the expert and fact witnesses reside in that state. Id. at 10. Based on these facts, and pursuant to the authority provided by Section 157(b)(5), the Court is persuaded that principles of judicial economy and the convenience of the parties require the Court to exercise its discretion and transfer this action to the Montana District Court.

CONCLUSION

For the reasons discussed, the Court will grant the Motion to Withdraw and transfer this action to the Montana District Court.

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MONTANA, :
:
Defendant. :
:

O R D E R

At Wilmington, this 29th day of April, 2004, for the reasons
set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1) The Motion For Withdrawal Of Reference And Transfer To
United States District Court In Judicial District Of
Montana, Butte Division filed by the Estate of Orval
Meyer ("Plaintiff") (D.I. 1) is **GRANTED**;

a) The reference to the Bankruptcy Court is **WITHDRAWN**
pursuant to 28 U.S.C. § 157(d);

b) This matter is transferred to the United States

District Court in the Judicial District of
Montana, Butte Division.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT COURT